

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE MARCH 29, 2007

**SENATE BILL**

**No. 624**

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**Introduced by Senator Padilla**

February 22, 2007

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An act to amend Sections 22951, 22952, 22953, 22957, and 22958 of, and to add Section 22950.5 to, the Business and Professions Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 624, as amended, Padilla. Tobacco products: minors.

(1) The Stop Tobacco Access to Kids Enforcement (STAKE) Act is designed to reduce the availability of tobacco products to minors through sales restrictions and enforcement activities. The act, among other things, prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, a person under the age of 18 years, *and* authorizes the assessment of civil penalties for violations of the act. Certain violations of the act are a criminal offense.

The STAKE Act requires the State Department of Health Services to take primary responsibility for enforcement of the act. The act requires the department to conduct random, onsite sting inspections at retail sites, and requires the department to enlist the assistance of persons who are 15 and 16 years of age for this purpose. The act requires the department to adopt and publish guidelines for the use of persons under 18 years of age in inspections.

This bill would make changes to the requirements for guideline provisions, including, but not limited to, provisions relating to authorized state and local enforcement agencies.

(2) The act requires funds collected as civil penalties under the act, up to \$300,000 per year, to be deposited in the State Treasury to the credit of the Sale of Tobacco to Minors Control Account to be expended for purposes of the act upon appropriation by the Legislature. The act requires funds collected in one year that exceed \$300,000 to be deposited in the General Fund.

This bill would require all moneys collected as civil penalties under the act by the department and other state agencies to be deposited into the account.

(3) Existing law authorizes the department to enter into an agreement with a local law enforcement agency for the enforcement of the act within the agency's local jurisdiction. The act requires the department to reimburse local law enforcement agencies for enforcement costs pursuant to an agreement from the Sale of Tobacco to Minors Control Account.

This bill would specifically authorize an enforcing agency, as defined, other than the department, to conduct inspections and assess penalties for violations of the act if the enforcing agency complies with the act and with all applicable laws and guidelines. ~~The bill would eliminate the requirement that the department reimburse local law enforcement costs under an agreement, and would, instead, authorize the department to do so.~~ The bill would require reimbursements to be made from the Sale of Tobacco to Minors Control Account or from an account, otherwise appropriated for this purpose, specified by the department from which funds may be expended for that purpose. The bill would prohibit *the* funds from an account specified by the department from being used to supplant existing funding for enforcement activities.

(4) Existing law authorizes the department to assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, tobacco related products.

This bill would make changes to the civil penalty amounts for the first and second violations of that provision and would authorize, not only the department, but also any enforcing agency, to assess those civil penalties.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 22950.5 is added to the Business and  
2 Professions Code, to read:

3     22950.5. For purposes of this division, the following terms  
4 have the following meanings:

5     (a) “Department” means the State Department of Public Health.

6     (b) “Enforcing agency” means the State Department of Public  
7 Health, another state agency, including, but not limited to, the  
8 office of the Attorney General, or a local law enforcement agency,  
9 including, but not limited to, a city attorney, district attorney, or  
10 county counsel.

11     SEC. 2. Section 22951 of the Business and Professions Code  
12 is amended to read:

13     22951. The Legislature finds and declares that reducing and  
14 eventually eliminating the illegal purchase and consumption of  
15 tobacco products by minors is critical to ensuring the long-term  
16 health of our state's citizens. Accordingly, California must fully  
17 comply with federal regulations, particularly the “Synar  
18 Amendment,” that restrict tobacco sales to minors and require  
19 states to vigorously enforce their laws prohibiting the sale and  
20 distribution of tobacco products to persons under 18 years of age.  
21 Full compliance and vigorous enforcement of the “Synar  
22 Amendment” requires the collaboration of multiple state and local  
23 agencies that license, inspect, or otherwise conduct business with  
24 retailers, distributors, or wholesalers that sell tobacco.

25     SEC. 3. Section 22952 of the Business and Professions Code  
26 is amended to read:

27     22952. On or before July 1, 1995, the State Department of  
28 Public Health shall do all of the following:

29     (a) Establish and develop a program to reduce the availability  
30 of tobacco products to persons under 18 years of age through the  
31 enforcement activities authorized by this division.

32     (b) Establish requirements that retailers of tobacco products  
33 post conspicuously, at each point of purchase, a notice stating that  
34 selling tobacco products to anyone under 18 years of age is illegal  
35 and subject to penalties. The notice shall also state that the law  
36 requires that all persons selling tobacco products check the  
37 identification of a purchaser of tobacco products who reasonably  
38 appears to be under 18 years of age. The warning signs shall

1 include a toll-free telephone number to the department for persons  
2 to report unlawful sales of tobacco products to minors.

3 (c) Provide that primary responsibility for enforcement of this  
4 division shall be with the department. In carrying out its  
5 enforcement responsibilities, the department shall conduct random,  
6 onsite sting inspections at retail sites and shall enlist the assistance  
7 of persons that are 15 and 16 years of age in conducting these  
8 enforcement activities. The department may conduct onsite sting  
9 inspections in response to public complaints or at retail sites where  
10 violations have previously occurred, and investigate illegal sales  
11 of tobacco products to minors by telephone, mail, or the Internet.  
12 Participation in these enforcement activities by a person under 18  
13 years of age does not constitute a violation of subdivision (b) of  
14 Section 308 of the Penal Code for the person under 18 years of  
15 age, and the person under 18 years of age is immune from  
16 prosecution thereunder, or under any other provision of law  
17 prohibiting the purchase of these products by a person under 18  
18 years of age.

19 (d) In accordance with Chapter 3.5 (commencing with Section  
20 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
21 the department shall adopt and publish guidelines for the use of  
22 persons under 18 years of age in inspections conducted pursuant  
23 to subdivision (c) that shall include, but not be limited to, all of  
24 the following:

25 (1) An enforcing agency may use persons under 18 years of age  
26 who are 15 or 16 years of age in random inspections to determine  
27 if sales of cigarettes or other tobacco products are being made to  
28 persons under 18 years of age.

29 (2) A photograph or video recording of the person under 18  
30 years of age shall be taken prior to each inspection or shift of  
31 inspections and retained by the enforcing agency for purposes of  
32 verifying appearances.

33 (3) An enforcing agency may use video recording equipment  
34 when conducting the inspections to record and document illegal  
35 sales or attempted sales.

36 (4) The person under 18 years of age, if questioned about his  
37 or her age, need not state his or her actual age but shall present a  
38 true and correct identification if verbally asked to present it. Any  
39 failure on the part of the person under 18 years of age to provide

1 true and correct identification, if verbally asked for it, shall be a  
2 defense to an action pursuant to this section.

3 (5) The person under 18 years of age shall be under the  
4 supervision of a regularly employed peace officer during the  
5 inspection.

6 (6) All persons under 18 years of age used in this manner by an  
7 enforcing agency shall display the appearance of a person under  
8 18 years of age. It shall be a defense to an action under this division  
9 that the person's appearance was not that which could be generally  
10 expected of a person under 18 years of age, under the actual  
11 circumstances presented to the seller of the cigarettes or other  
12 tobacco products at the time of the alleged offense.

13 (7) Following the completion of the sale ~~or attempted sale~~, the  
14 *peace officer accompanying the person under 18 years of age shall*  
15 *reenter the retail establishment and shall inform the seller of the*  
16 *random inspection. Following an attempted sale*, the enforcing  
17 agency shall notify the retail establishment of the inspection.

18 (8) Failure to comply with the procedures set forth in this  
19 subdivision shall be a defense to an action brought pursuant to this  
20 section.

21 (e) Be responsible for ensuring and reporting the state's  
22 compliance with Section 1926 of Title XIX of the federal Public  
23 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing  
24 regulations adopted in relation thereto by the United States  
25 Department of Health and Human Services. A copy of this report  
26 shall be made available to the Governor and the Legislature.

27 (f) Provide that any civil penalties imposed pursuant to Section  
28 22958 shall be enforced against the owner or owners of the retail  
29 business and not the employees of the business.

30 SEC. 4. Section 22953 of the Business and Professions Code  
31 is amended to read:

32 22953. (a) Except as provided in subdivision (b), all moneys  
33 collected as civil penalties by the department and other state  
34 agencies pursuant to this division shall be deposited in the State  
35 Treasury to the credit of the Sale of Tobacco to Minors Control  
36 Account that is hereby established.

37 (b) Notwithstanding subdivision (a), all funds collected within  
38 any one fiscal year as civil penalties pursuant to this division that  
39 exceed the sum of three hundred thousand dollars (\$300,000) shall  
40 be deposited in the General Fund.

1 SEC. 5. Section 22957 of the Business and Professions Code  
2 is amended to read:

3 22957. (a) In addition to the primary enforcement  
4 responsibility assumed by the department, another enforcing agency  
5 may conduct inspections and assess penalties for violations of this  
6 division if the enforcing agency complies with this division and  
7 with all applicable laws and guidelines developed pursuant to this  
8 division.

9 (b) The department may, if necessary or convenient, enter into  
10 an agreement with local law enforcement agencies for the  
11 enforcement of this division. The agreement shall require the  
12 enforcement activities of the state and local law enforcement  
13 agencies to comply with this division and with all applicable laws  
14 and the guidelines developed pursuant to this division.

15 (c) In cases where an enforcement agreement exists, any  
16 enforcement by the department in those jurisdictions shall be  
17 coordinated with the local law enforcement agencies and the  
18 department shall not duplicate enforcement activities, so as to  
19 result in a duplication of civil penalties or assessments under this  
20 division.

21 (d) In those cases where the department and the enforcement  
22 agency have entered into an agreement, the department ~~may~~ *shall*  
23 reimburse local law enforcement agencies for enforcement costs  
24 pursuant to the agreement, not to exceed the projected costs to the  
25 department for enforcement of this division in those jurisdictions.  
26 Reimbursements shall be made from the Sale of Tobacco to Minors  
27 Control Account or from an account specified by the department,  
28 which ~~has~~ *includes funds that have* been appropriated for this  
29 purpose by other provisions of law, from which funds may be  
30 expended for this purpose. Funds from an account specified by  
31 the department in an agreement shall not be used to supplant  
32 existing funding for enforcement activities.

33 SEC. 6. Section 22958 of the Business and Professions Code  
34 is amended to read:

35 22958. (a) An enforcing agency may assess civil penalties  
36 against any person, firm, or corporation that sells, gives, or in any  
37 way furnishes to another person who is under the age of 18 years,  
38 any tobacco, cigarette, cigarette papers, any other instrument or  
39 paraphernalia that is designed for the smoking or ingestion of  
40 tobacco, products prepared from tobacco, or any controlled

1 substance, according to the following schedule: (1) a civil penalty  
2 of from four hundred dollars (\$400) to six hundred dollars (\$600)  
3 for the first violation, (2) a civil penalty of from nine hundred  
4 dollars (\$900) to one thousand dollars (\$1,000) for the second  
5 violation within a five-year period, (3) a civil penalty of from one  
6 thousand two hundred dollars (\$1,200) to one thousand eight  
7 hundred dollars (\$1,800) for a third violation within a five-year  
8 period, (4) a civil penalty of from three thousand dollars (\$3,000)  
9 to four thousand dollars (\$4,000) for a fourth violation within a  
10 five-year period, or (5) a civil penalty of from five thousand dollars  
11 (\$5,000) to six thousand dollars (\$6,000) for a fifth or subsequent  
12 violation within a five-year period.

13 (b) The enforcing agency shall assess penalties in accordance  
14 with the schedule set forth in subdivision (a) against a person, firm,  
15 or corporation that sells, offers for sale, or distributes tobacco  
16 products from a cigarette or tobacco products vending machine,  
17 or a person, firm, or corporation that leases, furnishes, or services  
18 these machines in violation of Section 22960.

19 (c) An enforcing agency may assess civil penalties against a  
20 person, firm, or corporation that sells or deals in tobacco or any  
21 preparation thereof, and fails to post conspicuously and keep posted  
22 in the place of business at each point of purchase the notice  
23 required pursuant to subdivision (b) of Section 22952. The civil  
24 penalty shall be in the amount of two hundred dollars (\$200) for  
25 the first offense and five hundred dollars (\$500) for each additional  
26 violation.

27 (d) An enforcing agency shall assess penalties in accordance  
28 with the schedule set forth in subdivision (a) against a person, firm,  
29 or corporation that advertises or causes to be advertised a tobacco  
30 product on an outdoor billboard in violation of Section 22961.

31 (e) If a civil penalty has been assessed pursuant to this section  
32 against a person, firm, or corporation for a single, specific violation  
33 of this division, the person, firm, or corporation shall not be  
34 prosecuted under Section 308 of the Penal Code for a violation  
35 based on the same facts or specific incident for which the civil  
36 penalty was assessed. If a person, firm, or corporation has been  
37 prosecuted for a single, specific violation of Section 308 of the  
38 Penal Code, the person, firm, or corporation shall not be assessed  
39 a civil penalty under this section based on the same facts or specific

1 incident upon which the prosecution under Section 308 of the Penal  
2 Code was based.

3 (f) (1) In the case of a corporation or business with more than  
4 one retail location, to determine the number of accumulated  
5 violations for purposes of the penalty schedule set forth in  
6 subdivision (a), violations of this division by one retail location  
7 shall not be accumulated against other retail locations of that same  
8 corporation or business.

9 (2) In the case of a retail location that operates pursuant to a  
10 franchise as defined in Section 20001, violations of this division  
11 accumulated and assessed against a prior owner of a single  
12 franchise location shall not be accumulated against a new owner  
13 of the same single franchise location for purposes of the penalty  
14 schedule set forth in subdivision (a).

15 (g) Proceedings under this section shall be conducted in  
16 accordance with Section 100171 of the Health and Safety Code,  
17 except in cases where a civil penalty is assessed by an enforcing  
18 agency other than the department, in which case, proceedings shall  
19 be conducted in accordance with the procedures of that agency  
20 that are consistent with Section 22957.